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Paper No. 8

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New York, NY 10004

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DEC 18 2003

**OFFICE OF PETITIONS**

In re Application of  
Hans-Joerg Mathony  
Application No. 09/960,571  
Filed: September 21, 2001  
Attorney Docket No. 10191/1917

DECISION DISMISSING REQUEST

This is in response to the "Statement Under 35 U.S.C. § 21(a) and 37 C.F.R. § 1.6(e)" filed September 21, 2001, which is being treated as a request that the above-identified application be accorded a filing date of September 12, 2001. The application was only recently forwarded to this office for consideration of the request.

The above-identified application was filed on September 21, 2001. Applicant requests that the application be accorded a filing date of September 12, 2001 under the provisions of 37 CFR 1.6(e).

37 CFR 1.6(e) states that:

If interruptions or emergencies in the United States Postal Service which have been so designated by the Commissioner occur, the Patent and Trademark Office will consider as filed on a particular date in the Office any correspondence which is:

- (1) Promptly filed after the ending of the designated interruption or emergency; and
- (2) Accompanied by a statement indicating that such correspondence would have been filed on that particular date if it were not for the designated interruption or emergency in the United States Postal Service.

35 U.S.C. 21(a) states that:

The Director may by rule prescribe that any paper or fee required to be filed in the Patent and Trademark Office will be considered filed in the Office on the date on which it was deposited with the United States Postal Service or would have been deposited with the United States Postal Service but for postal service interruptions or emergencies designated by the Director.

The U.S. Patent and Trademark Office (Office) designated the interruption in the service of the USPS in the borough of Manhattan as a postal service interruption and emergency within the meaning of 35 U.S.C. 21(a), with the provisions of 37 CFR 1.6(e) in effect. The Office also designated the interruption in the Express Mail service of the USPS as a postal service interruption within the meaning of 35 U.S.C. 21(a) and 37 CFR 1.6(e). See "United States Postal Service Interruptions", 1251 *Off. Gaz. Pat. Office* 55 (October 9, 2001).

The request does not allege any facts on which the application can be accorded a September 12, 2001 filing date. The request merely indicates that postal service may have been restored in the area covering the office of Kenyon & Kenyon on September 20, 2001, and then asserts that the correspondence would have been filed on September 12, 2001 if it were not for the USPS interruption and emergency. The statute requires that the correspondence being filed in the Office would have been deposited with the United States Postal Service but for **postal service** interruptions or emergencies. Thus, the statute requires that (1) the application papers being filed must be complete and ready to be deposited with the USPS on the filing date requested by applicant, and (2) the complete application papers could not be deposited with the USPS for the sole reason that the postal service was not available due to the interruption or emergency designated by the Office. It is noted that the transmittal letter for the application is dated September 21, 2001, and thus it does not appear that the application was prepared and ready to be deposited with the USPS on September 12, 2001. There is no indication that the application was attempted to be deposited with the United States Postal Service (USPS) Express Mail service on September 12, 2001 and that the USPS refused to accept the correspondence or that the application was ready to be deposited with the USPS on September 12, 2001 but all post offices in the area were closed due to the events of September 11, 2001.

It is noted that the application includes a claim for foreign priority based on a German application filed September 12, 2000. An applicant may delay action until the end of the time period for taking action, but are acting at their own peril when doing so. See Ziegler et al. v. Baxter et al. v. Natta et al., 159 USPO 378 (ComrPats 1968).

In view of the above, the request is dismissed.

Any request for reconsideration should be filed within **TWO MONTHS** of this decision in order to be considered timely (see 37 CFR 1.181(f)) and should be directed as follows:

By mail: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

By FAX: (703) 872-9306  
Attn: Eugenia Jones  
Office of Patent Legal Administration

By hand: U.S. Patent and Trademark Office  
2011 South Clark Place  
Customer Window, Mail Stop Petition  
Crystal Plaza Two, Lobby, Room 1B03  
Arlington, VA 22202

The application is being returned to Technology Center 2100 to await any response to the Office action mailed July 2, 2003.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 306-5586.

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for Patent Examination Policy